

Office - Supreme Court, U.S.
FILED
OCT 25 1983
ALEXANDER L. STEVAS,
CLERK

NO. 83-438

IN THE
Supreme Court Of The United States
OCTOBER TERM, 1983

WILBURN A. HENDERSON,

Petitioner,

vs.

STATE OF ARKANSAS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARKANSAS

SUPPLEMENTAL JURISDICTIONAL STATEMENT

LESSENBERRY & CARPENTER
807 West Third Street
Little Rock, Arkansas 72201
(501) 372-4040

By: THOMAS M. CARPENTER
Counsel for Petitioner

TABLE OF CONTENTS

	Page
SUPPLEMENTAL	
JURISDICTIONAL STATEMENT	1
CERTIFICATE OF SERVICE	4
TABLE OF AUTHORITIES:	
<i>Heflin v. United States</i> , 358 U.S. 415 (1959)	3
<i>Taglianetti v. United States</i> , 394 U.S. 316 (1969)	1
Rule 22.6, Rules of the Supreme Court	1

IN THE
Supreme Court Of The United States
OCTOBER TERM, 1983

WILBURN A. HENDERSON,

Petitioner,

vs.

STATE OF ARKANSAS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARKANSAS

SUPPLEMENTAL JURISDICTIONAL STATEMENT

Petitioner, Wilburn A. Henderson [hereafter Henderson], submits this supplemental jurisdictional statement pursuant to Rule 22.6, Rules of the Supreme Court.

Henderson filed a certiorari petition with this Court on September 12, 1983. In the jurisdictional statement Henderson noted that the petition was timely because an extension of time had been obtained by prior counsel. Henderson has since learned that prior counsel did not obtain an extension of time as contemplated by this Court's rules. Henderson's present counsel submits that notwithstanding the apparent untimeliness of this petition, the Court can consider it since this is a criminal case and the rules for filing certiorari petitions in criminal cases are not mandatory. *Taglianetti v. United States*, 394 U.S. 316 (1969).

Henderson's present counsel was asked to prepare the certiorari petition on or about August 12, 1983. Counsel informed Henderson that he could not complete the certiorari petition unless an extension of time was obtained from the Court. Counsel informed Henderson's prior counsel of the steps to use in obtaining an extension of time.

The confusion on the due date for the certiorari petition was based upon two factors: (1) The Supreme Court of Arkansas had provided an order granting Henderson 90 days to file the certiorari petition; (2) Henderson's prior counsel, unfamiliar with the Rules of this Court, assumed that he was allowed 90 days for this petition as opposed to 60.

Former counsel called the Clerk's office to gain an extension of time. Upon consultation with one of the clerks he concluded that an appeal could be filed within 90 days, that that appeal would be treated as a certiorari petition, so no additional motion would be necessary. Former counsel then called present counsel's office and left word that he had made arrangements with the Clerk for the petition to be filed on September 12, 1983.

Present counsel has handled matters before this Court before and knows the procedure to obtain enlarged time for filing the certiorari petition. If present counsel had known the actual circumstances concerning the extension of time prior to the filing of the petition, counsel would have set this fact out in the Jurisdictional Statement.

This Court has jurisdiction pursuant to 28 U.S.C. §1257. The Court should exercise its discreton and act on this certiorari petition in this criminal case. *Heflin v. United States*, 358 U.S. 418, n.7 (1959).

Respectfully submitted,

LESSENBERRY & CARPENTER
807 West Third Street
Little Rock, Arkansas 72201
(501) 372-4040

By: THOMAS M. CARPENTER
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, Thomas M. Carpenter, present counsel for petitioner [Henderson] herein, and a member of the Bar of this Court, do hereby certify that a correct number of copies of the foregoing supplemental petition have been served on opposing counsel this 18th day of October, 1983, by mailing same, first class postage prepaid, to the Honorable J. Steven Clark, Office of the Attorney General, Justice Building, Little Rock, Arkansas 72201.

/s/ Thomas M. Carpenter

Counsel for Petitioner